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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,776	07/19/2005	Jacques Bellalou	263894US2PCT	1227
22850	7590	07/14/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
BOBBS, MICHAEL L				
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
07/14/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com

oblonpat@oblon.com

jgardner@oblon.com

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/517,776

Applicant(s)

BELLALOU ET AL.

Examiner

MICHAEL HOBBS

Art Unit

1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/M. H./
Examiner, Art Unit 1797

/William H. Beisner/
Primary Examiner, Art Unit 1797

Continuation of 3. NOTE: The newly added limitation of the "regulation of the temperature by Peltier effect being independent and programmable for each microfermentor" in lines 14 and 15 of claim 1 and lines 3 and 4 of claim 9 was not dealt with in the previous Office correspondence. Therefore, this new limitation raises a new issue that would require further search and consideration on the part of the examiner .

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues on page 6 that the prior art of record fails either singly or in combination to disclose the capability of programming the culture temperatures that [are] key to optimizing bacteriological methods. The limitation of a programmable heating system with individual heating elements, as stated above, was not presented in the previous claim set and raises new issues that would require further search and consideration on the part of the examiner. Also, the type of reaction within the wells constitutes material worked upon by an apparatus that does not structurally define the instant application over the prior art (See MPEP 2115) and furthermore, the claim language does not preclude the applied reference Kurihara. Regarding Applicant's arguments toward the applied reference Gaillon, the applied reference corrected the deficiency within Kurihara regarding the size of the reaction wells. Adjusting the size of the well for holding a different amount of sample or for a different reaction is a change in the relative dimensions of the wells and the device of Kurihara and Gaillon would not perform differently due to the volume change. Therefore, the size of the wells does not patentably distinguish the instant application over the prior art of record and this change in size would be obvious to the skilled artisan in order to obtain the predictable result of increasing the overall throughput of material tested by the device. Regarding Applicant's argument that a "invention can only be found obvious if there is "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness", it is noted that "a person of ordinary skill in the art is also a person of ordinary creativity, not an automaton."KSR, 550 U.S. at ___, 82 USPQ2d at 1397. "[I]n many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle."Id. Office personnel may also take into account "the inferences and creative steps that a person of ordinary skill in the art would employ."Id. at ___, 82 USPQ2d at 1396. In addition to the factors above, Office personnel may rely on their own technical expertise to describe the knowledge and skills of a person of ordinary skill in the art. The Federal Circuit has stated that examiners and administrative patent judges on the Board are "persons of scientific competence in the fields in which they work" and that their findings are "informed by their scientific knowledge, as to the meaning of prior art references to persons of ordinary skill in the art." In re Berg , 320 F.3d 1310, 1315, 65 USPQ2d 2003, 2007 (Fed. Cir. 2003). As stated, the specific size of the micro-fermentor used for the culturing of and testing for a microorganism is merely a change in size of the micro-fermentor that would have been obvious to the skilled artisan in order to obtain the predictable result of increasing the overall throughput of the system. Regarding Applicant's argument to the applied reference Bannerjee, Applicant argues that the reference discloses measuring turbidity for wastewater and that there is no requirement for heating. The Examiner disagrees with this assertion. First, Bannerjee corrects the deficiency with Kurihara and Gaillon with regards to measuring the turbidity of the sample. Second, Bannerjee demonstrates that turbidity testing was a known technique at the time of the instant application and that the skilled artisan would have been aware of measuring the turbidity of a fluid sample, such as wastewater or a culture medium in order to determine the amount of biological activity within that sample. Therefore, this would have been obvious to the skilled artisan to combine the turbidity testing of Bannerjee with the device of Kurihara and Gaillon in order to obtain the predictable result of monitoring the extent of reaction within the micro-fermentors.